APPENDIX A

U.S. DISTRICT COURT NEWARK

ORDER

OPINION

RESPONSE FROM PLAINTIFF

FILED
AUG 27, 2001

William T. Walsh Clerk

United States District Court
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,
ex rel. JOHN F. MALLOY

PLAINTIFF

v.

TELEPHONICS CORPORATION

DEFENDANT.

John F. Malloy, Pro Se
246 Gullane Road
Charleston, SC 29414

Todd M. Sahner, Esq
Dunetz Marcus,LLC
Plaza II Suite 1500
354 Eisenhower Parkway
Livingston, NJ 07039-1023

BISSELL,CHIEF JUDGE

This matter is before the Court on Defendant Telephonics' motion to dismiss Plainiff's complaint under Fed. R. Civ . P. 12(b) 2, 3, and 6. Plaintiff's Complaint alleges claims under the False Claims Act (FCA) , Title 31 U.S.C. S 3730. The events upon which Plaintiff bases his

complaint Occurred during 1990 and 1991. Plaintiff claims that Telephonics committed violations of the FCA when it prepared and submitted a claim to the United States Army in 1991. Plaintiff also alleges that Telephonics violated the False Claims Act by terminating his employment in retaliation for his failure to support the claim Telephonics submitted to the government. Mr. Malloy admits he was terminated in July 1991. Defendant argues that plaintiff's claims are therefore time barred. This Court has Jurisdiction pursuant to 28 U.S.C. S1331.

Title 31 U.S.C. S 3731 states in pertinent part:

(b) A ciivil action under section 3730 may not be brought-

(1) more than 6 years after the date on which the violation of 3729 is committed, or

(2) more than 3 years after the facts material to the right of action are known or reasonably by the offical of the United States charged with the resonsibility to act in the circumstances, but in no event more than 10 years after the date that thr violation is committed, whichever occurs last.

The Defendant argues that more than three years have elapsed after the date when facts material to the right of action were known or reasonably should have been known. Therefore Mr. Malloy's claims are time barred.(p's Motion to dismiss D'sMotion to Dismiss, (p.2.). Neither side argues that Mr. Malloy was not aware of the commission of the alleged fraud at the time it occurred. In factMr Malloy's Complaint is rife with references stating that he was aware of the fraud before and during its actual occurrence. Therefore,this Court finds provisions of 31 U. S.C. s 3731 (b)(2) do not apply. In stead, the six year limitations described in s 373131 (b)(1)applies in this case where the plaintiff was aware of the fraud as it occurred. See United States of America, ex rel Koch v.Koch Industries, INC. , F.R.D. 617, 623 (N.D. OK.1999).

Accordingly, on its face, it would appear that Plaintiff's claims were time barred, since the applicable statute of limitations expired on September 21, 1997,and his complaint was filed on February 23, 2001. In opposition to this Motion, the Plaintiff raises what this Court interprets as two separate arguments. The first is that Plaintiff's original complaint ,filed June 30, 1997,was timely, and the new complaint should relate back to the old complaint for statute of limitations purposes.(1) The second is that the running of time during which the old complaint was pending should be equitably tolled because of the incompetence of the Plaintiffs lawyer, who

caused the old complaint to be dismissed without prejudice. the Court will address each argument in turn.

(1) that action originally filed in South Carolina was transferred to this Court on October30, 1998. U.S.A.. ex rel Malloy v. Telephonics Corp. , Civ. No. 98-5218(JWB).

Fed. R. Civ. P. 15 (c) states in pertinent part that:

An amendment of a pleading relates back to the date of the original pleading when : (1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempt to be set forth in the original pleading.....

As is clear from the language of the rule, the relation back theory is meant to apply to an amendant of a pleading in the same civil action to relate back to a complaint filed in a separate civil action. See Koch, 188 F.R.D. at 630. Therefore, Plaintiff's relation back argument is denied.

However, The Court finds merit in Plaintiff's equitable tolling claim. Altough the Third Circuit has not addressed the issue of equitable tolling in a False Claim Act situation, cases within the Tenth Circuit have explicitly found that equitable tolling applies to FCA cases. "The doctrine of equitable tollingis implied in every federal statute of limitations where its application is consistent with congressional intent, and called for in the facts of the case." Ebrahimi v E.F.Hutton & Co.Inc., F. 2d 516, 521 (10th Cir. 1988). The Court sees nothing in the language of S 3731 which indicates congressional preclusion of equitable tolling". Koch, 188 F.R.D. at 620. This Court agrees that equitable tolling applies in False Claims Act cases. Equitable tolling is appropiate in three general scenarios: (1) where a defendant actively misleads a plaintiff with respect to his cause of action; (2) where the plaintiff has been prevented from asserting his claim as a result of other extraordinary circumstances; or (3) where the plaintiff asserts his claim in a timely manner but has done so in the wrong forum. Lake v. Arnold, 232 F. 3d 360, 370 0 (3d Circ. 2000). We are concerned in this case only with the second scerario, where extraordinary circums prevent a plaintiff from timely filing.

This Court finds that the current set of facts fits within the second prong. The Plaintiff, Mr. Malloy, has been prevented from asserting his claim as a result of extraordinary circumstances, namely the incompetence of his attorney, Mr. Herrmann. The Plaintiff's original Complaint was filed on June 30,1997 and dismissed on September 27,1999 for insufficient process and insufficient service of process pursuant to Fed. R. Civ. P. 12 (b))4) and (5) as well as Fed. R. P. 4(m) for failure to serve the Summons and

Complaint within 120 days. All of these failures were attributable to Mr. Herrmann's neglect. Mr. Malloy throughout the course of the case, made every possible attempt to contact his attorney, including diligently keeping this Court apprized of the situation and doing everything in his power to move his case back on track. Herrmann was subsequently disbarred, and the Plaintiff brought him before the Monmouth County Board of Fee Arbitration, which held that the Plaintiff was entitled to a complete refund of all monies paid by the Plaintiff to Mr. Herrmann. This decision was upheld on appeal. This Court is hesitant to apply the doctrine of equitable tolling in a case involving a parties' neglect in prosecuting its own case. However, the situation is so egregious in this case that the running of the statute of limitations will be tolled during the pendency of Plaintiff's Original Complaint.

Under New Jersey law, if the basis for tolling a statute of limitations cases and there remains a reasonable period of time before the statute of linitations expires, then suit must be brought before the expiration of that period of time. Kaprow v. Board of Education of Berkley Twp., 131 N.J., 572, 589-90 (1993) ; Torcon, Inc. v. Alexian Bros. Hosp., 205N.J. Super. 428, 501 A. 2d 182 (Ch. Div. 1985), aff'd 209N. J. Super. 239 (App. Div. 1986), Certif. denied 104 N.J. 440(1986). As the Court in Kaprow explained:

If after the cessation of any basis for continued reliance by a plaintiff on the conduct of the defendant, there remains a reasonable time under the applicable statute of limitations period to commence a cause of action, the action willbe barred if not filed within the remaining time. 131 N.J. at 589-90 (citing Mosier v. Insurance Co. of N. Am. 193 N.J. Super. 190, 197 (App. Div. 1984)).

Therfore, although thid Court finds that the Statute of Limitations was equitably tolled while Mr. Malloy's action was pending before this Court, given the considerations raised previously the reason for the tolling ceased when the complaint was dismissed by this Court and Mr. Malloy became fully aware of the inaction of his attorney. The statute of limitations began to run again on September 27, 1999, the date on which Plaintiff's complaint was dismissed. At that point, the Plaintiff had eighty- two days remaining within the applicable period of limitations. (2). Plaintiff filed his motion for reconsideration of that dismissal on May 1, 2000. At that point, Plaintiff's eighty-two days had run.

It is true that"equitable tolling is eapecially appropriate in cases involving inexperienced, pro se litigants." Blackwell v.Vaughn, 2001 WL

872777, *2 (E. D. Pa.) ; see Kocian v. Getty Refining & Marketing Co. , 707 F . 2d 748, 755 (3d Cir. 1983). In addition, there is some case law which supports the proposition that a statute of limitations does not run while a motion forreconsideration is pending. See Metsopulos v. runyon , 918 F. Supp. 851, 861 (D. N.J. 1996) . However Plaintiff has no adequate ecplanation as to why he waited over seven months to file his motion for consideration. He was certainly aware of his attorney's inaction at the time the case was dismissed in September of 1999. He then proceeded to search for different counsel, but in the end, represented himself pro se. Although this Court is sympathetic to Mr. Malloy's plight, there is simply no evidence that, after September 27, 19999, the Plaintiff was "prevented from asserting his claim as a result of extraodinary circumstances". Therfore, this Court finds that the statute of limitations began to run again on September 27,1999, and expired on approximately December 18, 1999. Plaintiff's motion forreconsiferation was filed on May 1,2000 and his new Complaint (identical to its predecessor) was filed on April 2, 2001 ,after the statute of limitations period had run. Therefore, Plaintiff's Complaint is dismissed astime barred. (3).

The Defendant also moves to dismiss Plaintiff's Complaint based on lack of personal jurisdiction and improper venue,pursuant to Fed. P. 12(b) (2) and (3). However, as Defendant states in its Statement in lieu of brief,

"We Have not included the factual background orsupporting materials to support that part of the motion,though, since we believe it is obvious from the accompaning moving papers that the motion is clearly time barred. If it is determined otherwise, tdefendant will seek to supplement this motion with additional materials in support of the jurisdiction and venue objections."

(3) Even with a more liberal application applicapplication of equitable tolling, Plaintiff's second Complaint is time barred. If that tolling continued to December 29, 2000, the date upon which this Court filed its order denying the motion to reconsideration which had been filed on May 1,2000, Plaintiff still waited more than 82 days thereafter to file his renewed complaint commencing thepresent action (April 2, 2001) The Court determines, as noted above that the period of limitations expired on approximately December 18, 1999. But even under the alternative addressed in this footnote it expired on approximately March 21, 2001,
twelve days before plaintiff's April 2.2001 renewed complaint.

CONCLUSION

For the reasons exptressed above, Defendant's motion to dismiss based on the bar of the statute of limitations is granted and this action is dismissed with prejudice.
Defendant's companion motions motions under Fed. R. Civ. P. 12(b) (2) and (3) are dismissed, without prejudice, as moot.

Original Signed By : JOHN W. BISSELL
Chief Judge
United States District Court

DATED: August 27,2001

FILED
OCTOBER 3 2001by William T. Walsh Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA
EX REL JOHN F.MALLOY

PLAINTIFF **Civil Action 01-944(JWB)**

V **ORDER**

ENTERED
10-3-01

TELEPHONICS CORPORATION **BY AR**

DEFENDANT

This matter is before the Court pursant to plaintiff John F.Malloy's motion to have this Court to reconsider its opinion and order dated August 27 2001 dismissing this action action with prejudice because it is barred by the statute of limitations. The Court has considered the papers submitted, the files generated in this action and its predessor (Civ. No. 98-5218) and the docket entries in both cases. The Court will decide this motion upon all papers before it, without oral argument. The Court determines that it has neither overlooked or mischaracterized any material facts. The Court notes the inaccuracy on the thirteenth line of page 3 of the Opinion, however the date "February 23,2001" should be "April 2,2001". (Compare id.at 8,n.3).

This Order will correct that error. The Court's records demonstrate that, despite Mr. Malloy's arguments to the contrary, the present complaint was not received for filing until April 2, 2001. Furthermore, the Motion to recover Monies Paid in Violation of the Warranty Agreement, which Mr. Malloy filed on February 23, 2001 to initate the present action

would not stop the statute of limitations from continuing to run.now therefore,

IT IS on this 2nd day of October 2001, ORDERED that:

(1) The date "February 23 ,2001 stated at line 13, page of this Court"s Opinion dated August 27, 2001 be, and the same is amended to read "April 2,2001; and

(2) Plaintiff's motion for reconsideration of this Court's Opinion and Order of August 27, 2001 be, and the same thereby is, denied.

Signed by JOHN W. BISSELL
Chief Judge
United States District Court

FILED
OCTOBER 3 2001by William T. Walsh Clerk

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(3) Even with a more liberal application applicapplication of equitable tolling, Plaintiff's second Complaint is time barred. If that tolling continued to December 29, 2000, the date upon which this Court filed its order denying the motion to reconsideration which had been filed on May 1,2000, Plaintiff still waited more than 82 days thereafter to file his renewed complaint commencing thepresent action (April 2, 2001) The Court determines, as noted above that the period of limitations expired on approximately December 18, 1999. But even under the alternative addressed in this footnote it expired on approximately March 21, 2001,
twelve days before plaintiff's April 2,2001 renewed complaint.

CONCLUSION

For the reasons expressed above, Defendant's motion to dismiss based on the bar of the statute of limitations is granted and this action is dismissed with prejudice.
Defendant's companion motions motions under Fed. R. Civ. P. 12(b) (2) and (3) are dismissed, without prejudice, as moot.

Original Signed By : JOHN W. BISSELL
Chief Judge
United States District Court

DATED: August 27,2001

SUPPLEMENTARY STATEMENT RELATING TO FEDERAL COURT NEWARK Opinion of August 23, 2001 and 9/27/99

FIRST; DATE of false CLAIM IS ON OR ABOUT 9/27/91(date of the letter of transmittal, no date of presentation to CECOM has ever been provided by Telephonics) Malloy was unaware of thecontents and financial data of False Claim until 10/30/91when it was provided by CECOM for comment. Actual date of presentation as required by TITLE 31 S 3729 was between 9/27/91 and 10/30/91,when the plaintiff received a copy of the false claim. Since 10/30/91 is the only date that the plaintiff can attest to, unless Telephonics can produce documentary evidence of receipt by the Procurement Contracting Officer at CECOM, until then the only date useable in the plaintiff's complaint on the false claim is October 30, 1991, which of course changes the court's calculations by 33 days to 0, therefore, the dismissal with prejudice in August 23, 2002 must be revoked.

SECOND: The date of this False Claim is incomplete for two reasons: (1) the actual costs to date contain costs which were duplicated in the future False Engineering changes Claims of $450,000,which were not be paid until 8/30/95.and also contains the $$ 266,000 in disallowed costs, part of which will be paid in February 1996 when the Settlement Agreement was paid.

(2) The Cost proposal includes $4,049,807 in future costs, which were false, and would have been submitted for payments from (9/30/91 to 8/30/ 95)as False Progress Payments.; these are False because Telephonics ignored Contract clause C-18 which limits their Progress Payments To $4, 800,000, but, by June30, 1991 this amount had already been exceeded by $4,000,000; and the contract had been in default as of Jan 30, 1991 with a second default occurring in May 31, 1991. All the Progress Payments from 1/30/91 to 6/30/95-66 months in all) were false claims.

(3) Actions relating to this fraud were concealed by Telephonics in the Court of Claims case from the Department of Justice from 12/10/92 until 12/18/95, . Consider; in continuous false claims, since the false claim of 9/27/91 harbored future continuous false claims which extend from (9/27/91 to 8/30/95). In Mcninch referenced below."Where prime contractors have committed the fraud,each demand for payment generally been construed as a claim in accordance with the statement of the Supreme Court. This clearly makes the position of the District Court using the single date for the calculations of the statute of limitations incorrect; the August 23, 2002 decision must be reversed.

(4) Since the Plaintiff always used the date of the letter of transmittal as the date of the false claim September 27, 1991and used it over and over in the complaint, also provided this letter of transmittal of 9/27/91, together with the certification documents dated 9/26/91.**WHY IS IT ONLY THE DEFENDANT AND THE DISTRICT COURT USED THE INCORRECT DATE OF SEPTEMBER 21, 1991?**Just who was writing the court documents, and from what source? Since the dismissal of the case was made in terms of days , errors in any date by the District Court raises questions about the inaccuracy of its entire calculations.. Since ALL of the Plaintiff's documents contain the correct date, I am compelled to ask whether or not any member of the Court RESPONSIBLE FOR THESE DECISIONS had ever read the plaintiff's complaint and

his other documents?And POINT BLANK WHAT influence did the defendant have in the Court's Opinions?.

(5)JUST IN CASE THIS ARISES In his exit interview at Telephonics the Plaintiff clearly stated to the Director of Personnel that I was being fired for opposing a false claim which could result in criminal charges, and that no one who had brought in $15,000,000 in new business would be accused of not doing his job.

(6)The Court states that the Plaintiff knew of the frauds as they occurred. While he was aware of some of the frauds as they occurred, he was also unaware of continuing actions related to those frauds which would occur in the future: (a) the Complaint expressed the false claims which would be converted into class I change proposals, which were converted into increased costs of $ 450,000 between January 1992 to 8/30/95, (b) the Plaintiff also knew and expressed in the complaint the false Progress Payments which Ended in August 1995, and the Plaintiff expects that the overbilling to be in excess of $8,000,000, which were liquidated by 8/30/95,when deliveries were complete. The Court assumed that a false claim submitted on 9/27/91was the only false claim committed on this contract. Progress Payments alone account for 66 false claims , and the false claims on the changes account for 67 more, but the District Court assumed that false claims ended on 9/21/91, which assumption is patentately false.

(7) The submission of 4/2/01 contained the original VOL I & II of the complaint, a VOL III containing definitions of the Terms used in the Complaint, in order to prevent confusion with the jargon which the Plaintiff was familiar,and tended to use in the complaint, and was for information only, and had no impact on the complaint. VOL IV contained a complete analysis of all engineering changes based on the complete contract which was not available at the time of the complaint. The Plaintiff was more involved with contract negotiations, and he must apologize for providing the Court with all of the necessary information to arrive at a knowledgeable decision, which is the method used in negotiations and required if the Court decides to rule based on the documents submitted, and total disclosure of the facts may upset the judicial procedures.If

if the plaintiff erred his error was in the direction of allowing the Court to arrive at a decision with full disclosure all the facts presented for the defendant to challenge, but the defendant didn't challenge?why did the Court?, and for the Court to understand; but if expanding on the analysis of the 99 changes contained in Vol II of the complaint ; if the analysis of the 20 extra changes compromises the relationship back to the original complaint, the plaintiff will correct his error in including these twenty changes by withdrawing Vol IV, and apologize for trying to present a complete analysis of the changes to highlight the extent of the fraud., and he will stand on the analysis of 99 changes contained in VOL II which is titled "UNITED STATES OF AMERICA, EX RELATIO JOHN F. MALLOY, V. TELEPHONICS CORPORATION. VOLUME II OF THE COMPLAINT.. In opposition to the position of the Court on the relationship back to the original complaint. VolI is an integral part of the original complaint, which provides documentary evidence in support of VOL I , VOL II, was always part of the Complaint, containing evidence which would normally be provided at trial. However, in the plaintiff's experience, he has always been of the opinion to

disclose as much information as possible in negotiations and to the Court, which in my naively may have violated some requirement, which I must Challenge, When is too much

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(9) The Court Questions Why it took the Plaintiff took seven months to file his Motion for Reconsideration. As stated in the STATEMENT of the CASE, the Plaintiff requested that the Court to notify the Plaintiff of any Hearings on the the complaint.; he was notified of July and Aug hearings, both of which were postponed but he was not notified of the Sept 27, 1999. The Court assumes in its calculations that the Plaintiff was aware of the 9/27/99 decision; but with attendance at the hearing on 9/27/99 denied by the courts failure to notify, There are no facts which support the Court's assumption that the plaintiff was aware of the dismissal on 9/27/99. The Plaintiff discovered the dismissal indirectly through Telephonics on Nov 23, 19999(2months later). My attorney reacted to my anger and in DEC. 1999, provided documents for signature relating to a motion to reconsider. While his reaction was promising, the plaintiff ordered a copy of the docket 98-1528(JWB), in December 1999 which he received in early January 2000, and it was immediately apparent that Herrmann was not doing anything, so the Plaintiff sent a "show cause letter "to Mr. Herrmann. When this did not get any movement, the Plaintiff contacted Monmouth County legal ethics who advised him to take his case to theMonmouth County Fee Arbitration Panel, which was done, with a hearing in April 2000. In February 2000, the Plaintiff fired Mr. Herrmann because he seemed to be holding any Motion for Ransom. After the firing, the Plaintiff contacted 24 Attorneys in an attempt to hire a replacement for Mr. Herrmann with no success; the best that the Plaintiff could get was- "If he could have the case reopened then we'll consider." In between calls, the Plaintiff had to prepare for the documents for April Fee Arbitration

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(11) The Court stated that the Plaintiff's new complaint was filed on April 2, 2001. In order to achieve the filing of this complaint, the Plaintiff had to submit 15 copies of the Complaint the District Court before one was filed, (5 on 2/23/01, 5 in March, 5 on April 2 2001.) Can the District Court explain what happened to the ten copies submitted in February and March 2001 ? In the court of Appeals case, the appellant provided documentary evidence that the District Court had accepted a 9 pound package on 2/23/01 , but the court only filed 6 pounds of that receipt, and the missing document(the 5 copies of the complaint weighed 3 pounds), there has been no explanation of the missing 3 pounds. And in all fairness to the plaintiff, the uncontrolled actions of the District Court Newark, have seriously impaired the Plaintiff's ability to proceed on his action. The petitioner appeals to the the Supreme Court to revoke the District Courts Decisions of 9/27/99 and 8/23/01, and to make the petitioner whole, and correct the errors of the District Court.

A.) For the filing of 2/23/01, The Plaintiff personally prepared for the February 23, 2002. He copied the Documents, collated into five sets, bound the documents in each sets together with multiple rubber bands, checked them multiple times to ensure that the complaint was in each set, addressed the UPS shipping envelope, checked one more time to ensure that the complaint was in each set, put the sets in the envelope and sealed the envelope. Each Set consisted of the following documents:

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When the Plaintiff investigated this filing, he discovered that **THE SHIPMENT HAD WEIGHED 9 POUND, WHILE THE DOCUMENTS FILED BY THE CLERK'S OFFICE ONLY WEIGHED 6 POUNDS. FURTHER ANALYSIS DETERMINED THAT THE MISSING DOCUMENTS WEIGHED 3 POUNDS.**

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(C) The April 2, 2001 on the third try(15 copies of the complaint later) in three months the complaint was finally filed. For the District Court Newark ,a copy of my canceled check for the filing fee and a copy of the shipping document of 9/21/01, and the concept that the Plaintiff would forget to put the complaint in the 2/23/01 shipment is an insult to his intelligence!

CONCLUSION : The Petitioner appeals to the Supreme Court the dismissals of 9/27/99 and 8/23/02of the Federal District Court based on the Questionable actions of the Court described above, and to make the plaintiff whole, and to allow him to properly proceed with his action.

(12) While this may sound strange, the Plaintiff has always been interested in the symmetry of numbers, because he has always found that they often lead to interesting questions. Because of his curiosity, he became interested about the repetition of the date of 9/27/91, and 9/27/99; he realized that 9/30/91 and 9/30/99 were the end of the Fiscal Year for Telephonics and the actions on both these dates allowed Telephonics to avoid declaring the $1,814,000 loss on their annual statement, which would have affected the annual report of the Parent Corporation Giffon. Out of curiosity, who delayed the hearings by requesting the postponement of the July and August1999 hearings? THe PLaintiff knows that he did not ask, most certainly his ex attorney didn't. That leaves only the Court and the Defense Attorey; which one was it?

13) As stated in the Statement of the case, Telephonics violated the FALSE STATEMENT ACT, THE FALSE CLAIMS ACT, AND THE TRUTH IN NEGOTIATIONS ACT in the final contract negotiation by J.Smith, the submission of the false claim of 9/27/91,and the settlement agreement of 12/18/95.

Reference the statement of the case.

Brown V U.S.- Court of Claims- Government could refuse payment payment on a fully performed contract which was obtained in violation of these statutes.

Little v U.S. The court interpreted these statutes as prohibiting partial settlements of contracts wherein fraud has been committed on thr basis that the fraud destroys the validity of the entire contract.

The petitioner reminds the District Court that his defense on the statute of limitations was that the Telephonics false claim case did not consist of a single false claim, but false claims from beginning to end, but the Court only considered the single false claim of SEPTEMBER 21, 1991(Court's date).

UNITED STATES v. MCNINCH U.S.- Where prime contractors have committed the fraud, each demand for payment generally been construed as a claim in accordance with the statement of the Supreme Court.The Court did not consider this case law in its decision; and this case law confirms the plaintiff's defense of multiple false claims, which affect the statute of limitations date as calculated by the court was incorrect.

FEDERAL DISTRICT COURT RESPONSE BY PLAINTIFF

THE RESPONSE TO THE ORDER AND OPINION THE PRESENTATION OF WHICH THE PLAINTIFF WAS DENIED THE OPPORTUMITY TO PRESENT:

1.) The Plaintiff argued that there were multiple false claims, which the plaintiff intended to argue.

2.) As stated in the STATEMENT OF THIS CASE, Telephonics violated the FALSE STATEMENT ACT, THE FALSE CLAIM ACT, and THE TRUTH IN NEGIOTATIONS ACT:

A.) When Dr. Smith VP Command Systems Division negotiated the contract.
B.) When the False Claim of (/27/91) was submitted
C.) When Telephonics signed the Settlement Agreement.

3.) In accordance with the following case law:

Brown v. United States207 Ct. Cl. 768, 524 F.2d 693 (1975)" The Court of Claims ruled that the Government could refuse payment on a fully performed contracts which were obtained by fraud." which applies to this contract.

Little v. United States,138,Ct.Cl. 773, 152 F.Supp. 84(1957) "The Court interpreted this statute as prohibiting partial settlements of contracts wherein fraud was committedon the basis that the fraud destroys the validity of the entire contract".

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4.) The above cited case law supports the Plaintiff's argument that the frauds committed by Telephonics certainly affects the date of the statute of limitations, and destroys the Court's basis for dismissal with prejudice.

UPS Shipping Record

Wednesday, February 21, 2001

Questions?
www.ups.com
or
1-800-PICK-UPS

Received From

john f. malloy
246 gullane rd
CHARLESTON, SC 29414
Phone: 8435566391

Package
232

us federal court newark
CLERK OF THE COURT
Martin Luther King Courthous
50 Walnut St.

Newark, NJ 07101
Phone:

Tracking Number 1Z A93 R41 02 4351 9585
COD Amount:
* Declared Value:
Billable Weight: 9 lbs.
Package Contents Forms
Service: 2ND Day Air 373651

00373651000021774

C.O.D. Charge:
Declared Value Charge
Sat. Delivery Charge:

Total Package Charge: $21.77

Total: **$21.77**

* Unless a greater value is declared on this receipt, the shipper hereby declares and agrees that the released value of each package covered by this receipt is $100, which is a reasonable value under the circumstances surrounding the transportation, even in the event that the carrier repackages or assists the shipper in packaging a shipment. In addition the maximum value or declared value per package is $50,000, and the maximum [illegible]ity per package is $50,000. Claims not made to the carrier within 9 months of the scheduled delivery date are waived. The carrier shall not be liable for any special, incidental, or consequential damages.

mary of a C.O.D. amount is not a declaration of value. All checks tendered in payment of C.O.D.'s will be accepted by UPS at shipper's risk.

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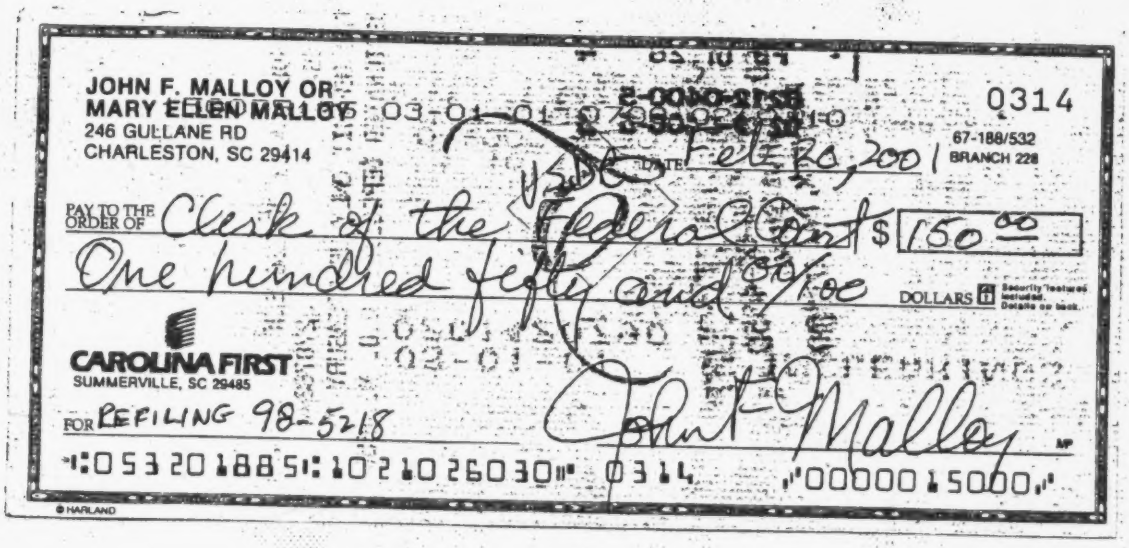


JOHN F. MALLOY OR
MARY ELLEN MALLOY
246 GULLANE RD
CHARLESTON, SC 29414

0314
67-188/532
BRANCH 228

DATE Feb 20, 2001

PAY TO THE ORDER OF Clerk of the Federal Court $ 150 00

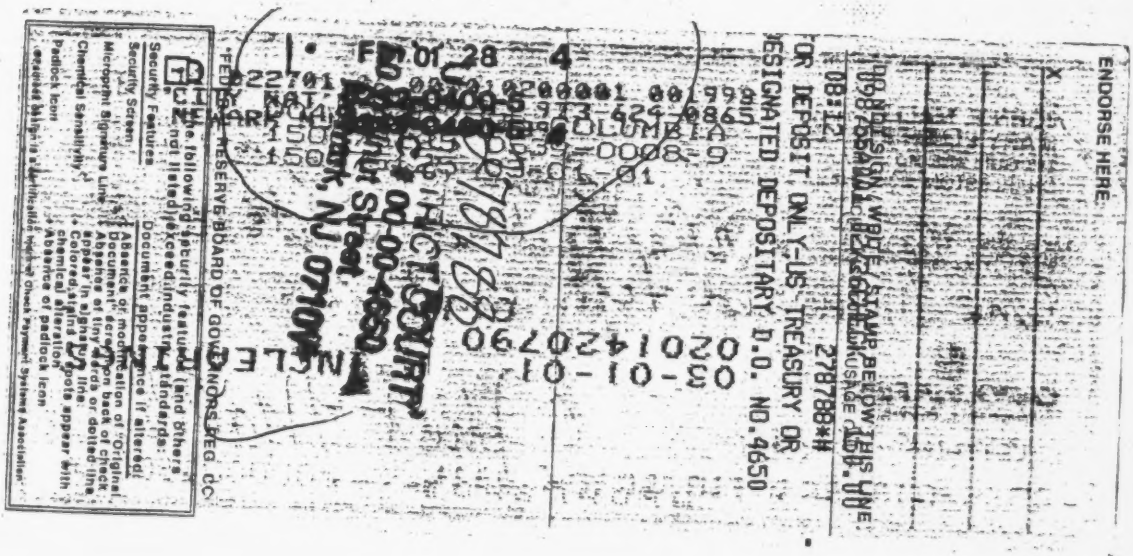
One hundred fifty and 00/100 DOLLARS

CAROLINA FIRST
SUMMERVILLE, SC 29485

FOR REFILING 98-5218

John F. Malloy

⑆053201885⑆ 102102603O" 0314 "000001500"



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FEDERAL RESERVE BANK OF RICHMOND

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Security Screen

Microprint Signature Line

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Padlock Icon

Document appearance if altered:

Absence of mottled effect on Original Document, seen on back of check

Absence of tiny words or dotted line appear in signature line

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Absence of padlock icon

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1

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FEB 23 2001
WILLIAM T. WALSH, CLERK

UNITED STATES OF AMERICA
***EX RELATIO* JOHN F. MALLOY**
PLAINTIFF

01-CV-0944(JWB)

v

TELEPHONICS CORPORATION
DEFENDANTS

REFILING OF DOCKET NO.
2;98 cv05218 (JWB)

20 FEBRUARY 2001

SUPPLEMENTARY STATEMENT RELATING TO FEDERAL COURT NEWARK Opinion of August 23, 2001 and 9/27/99

FIRST; DATE of false CLAIM IS ON OR ABOUT 9/27/91(date of the letter of transmittal, no date of presentation to CECOM has ever been provided by Telephonics) Malloy was unaware of thecontents and financial data of False Claim until 10/30/91when it was provided by CECOM for comment. Actual date of presentation as required by TITLE 31 S 3729 was between 9/27/91 and 10/30/91,when the plaintiff received a copy of the false claim. Since 10/30/91 is the only date that the plaintiff can attest to, unless Telephonics can produce documentary evidence of receipt by the Procurement Contracting Officer at CECOM, until then the only date useable in the plaintiff's complaint on the false claim is October 30, 1991, which of course changes the court's calculations by 33 days to 0, therefore, the dismissal with prejudice in August 23, 2002 must be revoked.

SECOND: The date of this False Claim is incomplete for two reasons: (1) the actual costs to date contain costs which were duplicated in the future False Engineering changes Claims of $450,000,which were not be paid until 8/30/95.and also contains the $$ 266,000 in disallowed costs, part of which will be paid in February 1996 when the Settlement Agreement was paid.

(2) The Cost proposal includes $4,049,807 in future costs, which were false, and would have been submitted for payments from (9/30/91 to 8/30/ 95)as False Progress Payments.; these are False because Telephonics ignored Contract clause C-18 which limits their Progress Payments To $4, 800,000, but, by June30, 1991 this amount had already been exceeded by $4,000,000; and the contract had been in default as of Jan 30, 1991 with a second default occurring in May 31, 1991. All the Progress Payments from 1/30/91 to 6/30/95-66 months in all) were false claims.

(3) Actions relating to this fraud were concealed by Telephonics in the Court of Claims case from the Department of Justice from 12/10/92 until 12/18/95, . Consider; in continuous false claims, since the false claim of 9/27/91 harbored future continuous false claims which extend from (9/27/91 to 8/30/95). In Mcninch referenced below."Where prime contractors have committed the fraud,each demand for payment generally been construed as a claim in accordance with the statement of the Supreme Court. This clearly makes the position of the District Court using the single date for the calculations of the statute of limitations incorrect; the August 23, 2002 decision must be reversed.

(4) Since the Plaintiff always used the date of the letter of transmittal as the date of the false claim September 27, 1991and used it over and over in the complaint, also provided this letter of transmittal of 9/27/91, together with the certification documents dated 9/26/91.**WHY IS IT ONLY THE DEFENDANT AND THE DISTRICT COURT USED THE INCORRECT DATE OF SEPTEMBER 21, 1991?**Just who was writing the court documents, and from what source? Since the dismissal of the case was made in terms of days , errors in any date by the District Court raises questions about the inaccuracy of its entire calculations.. Since ALL of the Plaintiff's documents contain the correct date, I am compelled to ask whether or not any member of the Court RESPONSIBLE FOR THESE DECISIONS had ever read the plaintiff's complaint and

his other documents?And POINT BLANK WHAT influence did the defendant have in the Court's Opinions?.

(5)JUST IN CASE THIS ARISES In his exit interview at Telephonics the Plaintiff clearly stated to the Director of Personnel that I was being fired for opposing a false claim which could result in criminal charges, and that no one who had brought in $15,000,000 in new business would be accused of not doing his job.

(6)The Court states that the Plaintiff knew of the frauds as they occurred. While he was aware of some of the frauds as they occurred, he was also unaware of continuing actions related to those frauds which would occur in the future: (a) the Complaint expressed the false claims which would be converted into class I change proposals, which were converted into increased costs of $ 450,000 between January 1992 to 8/30/95, (b) the Plaintiff also knew and expressed in the complaint the false Progress Payments which Ended in August 1995, and the Plaintiff expects that the overbilling to be in excess of $8,000,000, which were liquidated by 8/30/95,when deliveries were complete. The Court assumed that a false claim submitted on 9/27/91was the only false claim committed on this contract. Progress Payments alone account for 66 false claims , and the false claims on the changes account for 67 more, but the District Court assumed that false claims ended on 9/21/91, which assumption is patentately false.

(7) The submission of 4/2/01 contained the original VOL I & II of the complaint, a VOL III containing definitions of the Terms used in the Complaint, in order to prevent confusion with the jargon which the Plaintiff was familiar,and tended to use in the complaint, and was for information only, and had no impact on the complaint. VOL IV contained a complete analysis of all engineering changes based on the complete contract which was not available at the time of the complaint. The Plaintiff was more involved with contract negotiations, and he must apologize for providing the Court with all of the necessary information to arrive at a knowledgeable decision, which is the method used in negotiations and required if the Court decides to rule based on the documents submitted, and total disclosure of the facts may upset the judicial procedures.If

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Before the Court can state that the Filing did not occur, the Plaintiff demands an explanation from the Court on how the clerk opened the docket number without a complaint, and cashed the check for filing a complaint, and before he could file the other two documents, he had to remove the rubber bands from each set, and this had to be the point at which the complaint was lost in the clerk's office could only been lost at this point! The Court must be prepared to explain all the irregularities in the Clerks office. The March 2001 shipment, boxed and delivered to the Court's receptionist disappeared in its entirety.

(C) The April 2, 2001 on the third try(15 copies of the complaint later) in three months the complaint was finally filed. For the District Court Newark ,a copy of my canceled check for the filing fee and a copy of the shipping document of 9/21/01, and the concept that the Plaintiff would forget to put the complaint in the 2/23/01 shipment is an insult to his intelligence!

CONCLUSION : The Petitioner appeals to the Supreme Court the dismissals of 9/27/99 and 8/23/02of the Federal District Court based on the Questionable actions of the Court described above, and to make the plaintiff whole, and to allow him to properly proceed with his action.

(12) While this may sound strange, the Plaintiff has always been interested in the symmetry of numbers, because he has always found that they often lead to interesting questions. Because of his curiosity, he became interested about the repetition of the date of 9/27/91, and 9/27/99; he realized that 9/30/91 and 9/30/99 were the end of the Fiscal Year for Telephonics and the actions on both these dates allowed Telephonics to avoid declaring the $1,814,000 loss on their annual statement, which would have affected the annual report of the Parent Corporation Giffon. Out of curiosity, who delayed the hearings by requesting the postponement of the July and August1999 hearings? THe PLaintiff knows that he did not ask, most certainly his ex attorney didn't. That leaves only the Court and the Defense Attorey; which one was it?

13) As stated in the Statement of the case, Telephonics violated the FALSE STATEMENT ACT, THE FALSE CLAIMS ACT, AND THE TRUTH IN NEGOTIATIONS ACT in the final contract negotiation by J.Smith, the submission of the false claim of 9/27/91,and the settlement agreement of 12/18/95.

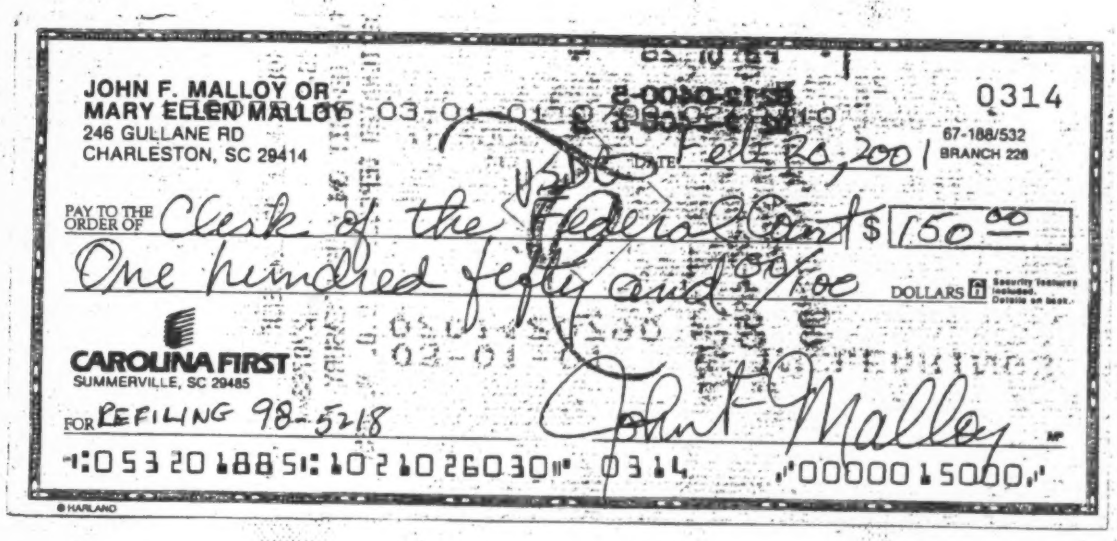
Reference the statement of the case.

Brown V U.S.- Court of Claims- Government could refuse payment payment on a fully performed contract which was obtained in violation of these statutes.

Little v U.S. The court interpreted these statutes as prohibiting partial settlements of contracts wherein fraud has been committed on thr basis that the fraud destroys the validity of the entire contract.

The petitioner reminds the District Court that his defense on the statute of limitations was that the Telephonics false claim case did not consist of a single false claim, but false claims from beginning to end, but the Court only considered the single false claim of SEPTEMBER 21, 1991(Court's date).

UNITED STATES v. MCNINCH U.S.- Where prime contractors have committed the fraud, each demand for payment generally been construed as a claim in accordance with the statement of the Supreme Court.The Court did not consider this case law in its decision; and this case law confirms the plaintiff's defense of multiple false claims, which affect the statute of limitations date as calculated by the court was incorrect.



JOHN F. MALLOY OR
MARY ELLEN MALLOY
246 GULLANE RD
CHARLESTON, SC 29414

0314
67-188/532
BRANCH 228

DATE Feb 20, 2001

PAY TO THE ORDER OF Clerk of the Federal Court $ 150 00

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SUMMERVILLE, SC 29485

FOR REFILING 98-5218

John Malloy

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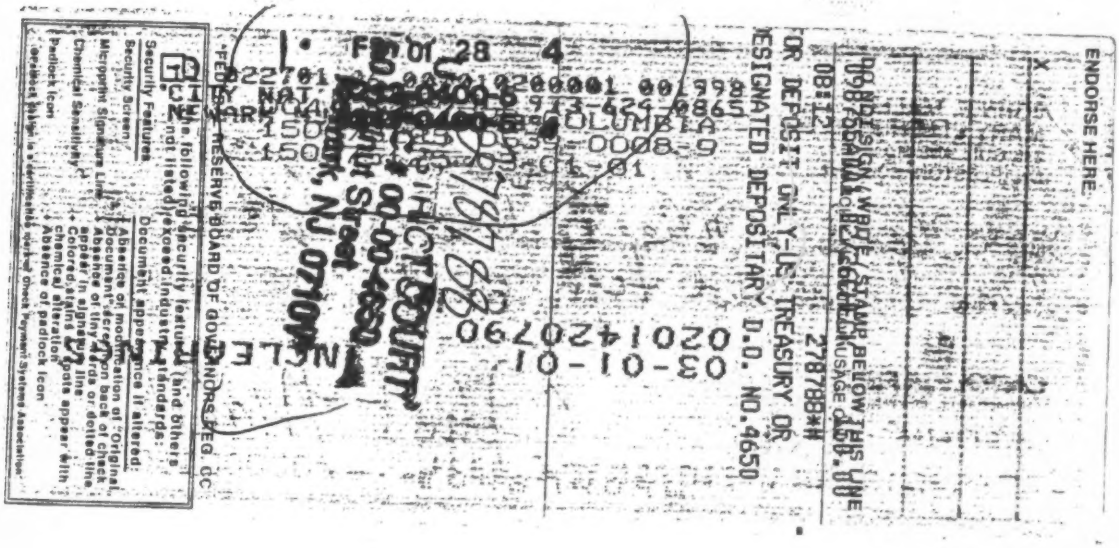

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WILLIAM T. WALSH, CLERK

JOHN F. MALLOY
246 GULLANE RD.
CHARLESTON, SC 29414
(843)556-6391
PLAINTIFF REPRESENTING HIMSELF

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA *ex rel* JOHN F. MALLOY,	**Civil Action No. 2:98cv05218(JWB)**
Plaintiff	**MOTION TO RECOVER MONIES PAID IN VIOLATION OF WARRANTY AGREEMENT**
TELEPHONICS CORPORATION	
Defendant	

Mr. Malloy acted as an unpaid consultant to the Government on the September 27, 1991 claim, until the Government settled this claim on December 19, 1995.

In spite of the effort expended by Mr. Malloy he was not privy to the settlement. Mr. Malloy was also acting as a non-paid consultant for Rodale Electronics on their civil suit against Telephonics Corporation. While the Government was aware of this action, they were not aware of the details of the action.

In 1997, Mr. Malloy processed a FOIA to CECOM Ft. Monmouth for a copy of contract DAAB07-90-c-P001, and after several attempts finally acquired a complete copy with the settlement agreement. Mr. Malloy realized immediately that there were major discrepancies between the settlement agreement, the

APPENDIX B
U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

OPINION
JUDGEMENT
RESPONSE
BY APPELLANT

(X) We return herewith the certified record in the case (s).
Kindly acknowledge receipt for the same on the enclosed copy of this letter.

Counsel are advised of the issuance of the mandate by copyof this letter. A copy of the certified judgement is also inclosed showing costs taxed, if any.

Very truly yours,
Marcia M. Waldron
Clerk

Original signed by : Carmella L. Wells
Case Manager

Enclosure
CC:

Mr. John F. Malloy
Todd M. Sahner, Esq.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS **Telephone**
267-299-4928

FOR THE THIRD CIRCUIT
21400 United States Courthouse
501 Market Street
Philadelphia, PA 19106-1790

WWW. ca3 . uscourts. go

Marcia M. Waldron
Clerk

June 30,2003

Mr. William T. Walsh, Clerk
United States District Court for the District of New Jersey
50 Walnut Street
Martin Luther King, Jr., Federal Office Building & Courthouse
Newark, NJ 07101

RE: DOCKET NO. 01-3916
Malloy vs. Telephonics Corp
D.C. No. 01-cv-00944

Dear Mr. Walsh:

Enclosed is a certified copy of the judgement together with copy of the opinion in the above- entitled case(s). The certified judgement is issued in lieu of the normal mandate and is to be treated in all repects as a mandate .

Case No:01-3916

UNITED STATES OF AMERICA
ex rel, JOHN F. MALLOY

V.

TELEPHONICS CORPORTATION

John F. Malloy,

Apellant

On Appeal from the United States District Court
For the District of New Jersey
(D.C. No. 01-cv-0944)
The Honorable John H. Bissell, District Judge

Submitted Under Third LAR 34.1 (a)
April 1,2003

Before: MCKEE, SMITH, COWEN, Circuit Judges

JUDGEMENT

This case came to be heard from the United States District Court for the District of New Jersey and was submitted on April 1,2003.

On consideration, it is hereby ORDERED AND ADJUDGED BY this Court that the judgement of the District entered August 28, 2001, for which reconsideration was denied on October 3, 2001 be and the same is hereby affirmed. Cost taxed against the Appellant. All of the above in accordance with the opinion of this court.

Attest:

Original signed by Marcia M.Waldron
Clerk

DATED: April 16,2003
Certified as a true copy and issued in lieu

of a formal mandate on 6/30/03

Teste: Original signed by Marcia M. Waldron

Clerk Court of Appeals for the Third Circuit.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case No.: 01-3916

UNITED STATES OF AMERICA,
ex rel JOHN F. MALLOY

v.

TELEPHONICS CORPORATION

John F. Malloy,

Appellant

On appeal from the United States District Court
For the District of New Jersey
(D.C. No. 01 -cv-00944)

The Honorable John H. Bissell, District Judge

Submitted Under Third Circuit LAR 34.1 (a)
April 1, 2003

Before MCKEE, SMITH, and COWEN, Circuit Judges

(filed :April 16, 2003)

OPINION OF THE COURT

SMITH, Circuit Judge :

I

On April 2, 2001,Appellant John Malloy brought a qui tam suit under the False Claims Act, 31 U.S.C. S 3729 et seq.,alleging that his former employer, Appellee Telephonics Corporation (hereinafter "Telephonics "), submitted a false claim to the government in 1991, in violation of 31 U.S.C. S3729 (a)(1)* (1.),and that Malloy was subject to a retalitory dismissal in July of 1991 based on activity protected by the False Claims Act, in violation of 31 U.S.C. S3730 (h)*(2). On Appeal, Malloy argues that the District Court erred in dismissing his claim as time barred under the six year statute of limitations set forth in 31 U.S.C. S 3731(b)(1). We will affirm the judgement of the District Court.

FOOTNOTES *(1) &*(2)

*(1.) 31 U.S.C. S 3729 (a) provides, in pertinent part:

(a) Liability for certain Acts. -- Any person who--

(1) knowingly presents, or causes to be presented to an officer or employee of the United States Government or a member of theArmed Forces of the United States a false or fraudulent claim for payment or approval.....is liable to the United States Government for a civil penalty of not less than$5000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person. 31.S.C. S 3729 (a)(1).

*(2) 31 U.S.C. S3730(h) provides:

Any employee Who is discharged, demoted, suspended.threatened, harassed, or in any other discriminated against in the terms and conditions of employment by his employer because of lawful acts done by the employee on behalf of the employee or thers in furtherance of an action under this section, including investigation for, initation of,testimony for, or assistance in an action filed or to be filed under this section , shall be entitled to all relief necessary to make the employee whole.such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in this subsection. 31 U.S.C. S 3730 (h).

II

This is not the first suit Malloy has filed against Telephonics under the False Claims Act. On June 30, 1997, Malloy filed suit under the False Claims Act in the U.S.District Court For the District of South Carolina. The United States Declined to exercise its right to intervene in that suit. On Octcber 30, 1998, that action was transferred to New Jersey*(3). On June 9, 1999, almost two years after he had filed the complaint, Malloy served a copy of his complaint on Telephonics at its corporate headquarters in Farmingdale, New York. However due to the time lapse and Malloy's failure to serve a summons on Telephonics, Telephonics sought didmissal to effect service of process. On September 27, 1999, the U.S. District Court For the District of New Jersey dismissed the complaint for insufficient service and for failure to effect process service within the requirements of Fed. R.Civ. P 4(m).

Malloy, proceeding pro se, filed on the instant case on April 2 ,2001 by serving the same complaint from his 1997 suit.*(4). The United States did not intervene in theOn June 22 ,2001, Telephonics moved to dismiss the complaint pursuant to Fed. R. Civ. P.12 (b) (6) based on the statute of limitatioins. The District Court determined that the statute of limitations had expired on "approximately December 18, 1999,". and dismissed the complaint with prejudice on August 27, 2001. The District Court denied Malloy'motion for reconsideration on October 3, 2001. Again proceeding pro se, Malloy filed the instant appeal.

FOOTNOTES *(3) & *(4)

(3.) Upon transfer to the Disrict of New Jersey, the action was given a Civil Number of 98-5218.

facts material to the right of action are known or reasonably should have been Known by the offical of the United States charged with the responsibility to act in the circumstances,but in no event more than 10 years after the date of the violation is committed, which ever occurs last.
31 U.S.C. S3731(b).

Malloy concedes that the claim accured when Telephonics filed the original false claim with the Army on September 21, 1991. Neither side contends that Malloy was unaware of the fraud at the time it occurred, and in fact, his complaint discusses his awareness of the facts underlying the alleged fraud prior to and during its actual occurrence. The time which Malloy became aware of the Fraud- September 21, 1991 is important because it determines whether we apply the six year statute oflimitations in S3731 (b)(1), or the three year limitation in S3731(b)(1). Because Malloy had knowledge of the alleged fraud more than three years before this action was filed, his only basis asserting that his claims were timely is to proceed under the six year limitations periodof S3731(b)(1) for asserting that his claims were timely is to proceed under the six year limitations period of S 3731(b)(1).

"While the language of Fed. R. Civ. P. 8(c) indicates that a statute of limitations defense cannot be used in the context of Rule 12 (b)(6) motion to dismiss, an exception made were the complaint facially shows non-compliance with the limitation period and the affirmative defense clearly appears on the face of the pleading."**OSHIVER V. LEVIN, FISHBEIN, SEDRAN & BERMAN**, 38, F.3d 1380, 1385 n.1 3rd Cir, 1994. In the instant case,the False Claim Act's six year period plainly bars Malloy's April 2, 2001complaint.On appeal, Malloy contends that the complaint he filed on June 30,1997 in South Carolina was timely, and that his April 2, 2001complaint should relate back to the first complaint for

statute of limitations purposes.Malloy asserts that the statute of limitations should during the pendency of his 1997 civil action because of the incompetence of his lawyer, who caused that complaint to be dismissed without prejudice.

We cannot agree with Malloy's contention that his 2001 complaint should relate back to the filing of the 1997 complaint in South Carolina. Federal Rule pf civil procedure 15(c)

provides that:

A} in amendment of a pleading relates back to the date of the original pleading when: (1) relation back is permitted by the law that provides the the statute of limitations applicable to the action, or (2) the claim or defense asserted pleading arose out of the conduct, transaction, or occurence set forth or attempted to be set forth in the original pleading...

Fed. R. Civ. 15(c) (emphasis added). The District Court correctly determined that pursuant to the plain langage of the rule the relationback theory applies to an amendment of a pleading in the same civil action. We agree that " Rule 15(c) does not permit a complaint in one civil action to relate back to a complaint in separate civil action." Accordingly, we affirm the District Court's determination that Malloy's 2001 New Jersey complaint does not relate back to the filing of the 1997 South Carolina complaint.

Statutes of limitations are subject to equitable where tolling is not consistent with the statute. **UNITED STATES V. BEGGERLY,** 524 U.S. 38, 48 (1998). ThisCourt has "executed caution in using the equitable tolling doctrine, "**SEITZINGER V. READING HOSP. & MED. CTR.,** 165 F. 3d 336, 240 (3rd Cir. 1999), but is appropiate to apply the doctrine " where it is consistent with congressional intent and called for by the facts of the case."

BOWEN V. CITY OF NEW YORK, 476 U.S. 467, 479 (1986); cf. **DAVIS V. JOHNSON,** 158 f.3D 806, 810 (5TH Cir"). 1998)

(The doctrine of equitable tolling preserves plaintiff'sclaims when strict pplication of the statute of limitations would be uequitable.Equitable tolling is appropriate in three types of situations:(1) where a defendant misleads a plaintiff with respect to his cause of action; (2) where the plaintiff has been prevented from asserting his claim as a result of other extraordinary circumstances; or(3) Where the plaintiff asserts his claims in a timely manner but has done so in the wrong forum. **Lake v. Arnold** 332 F.3d 360, 370 (3d Cir. 2000).(*5) The Third Circuit has not sddressed the issue of whether equitable tolling doctrine applies in cases arising under the False laims Act. Yet we need not reach that issue even if equitable tollings principles applied to toll the statute of limitations while Malloy's 1997 action was pending before the District Court, the statute of limitations began to run again on September 27, 1999. the date on which Malloy's claim was dismissed. At that point, any arguable "extraordinarycircumstances" -- namely Malloy's counsel's incompetent representation-- ceased. Malloy had eighty -two days remaining within the applicable limitations to pursue his claims. Since thestatute of limitations expired on approximately on December 18, 1999, Malloy's April 2 2001 complaint was time barred. *(6).

Malloy's final contention on appeal is that the statute of limitations should be tolled for an additional four months due to his recovery period from brain surgery which he underwent October 1996. In support of his request for additional tolling, Malloy submitted a one page hospital form listing the expenses from his surgery, . He did not provide any certification, affidavit, or other verification from any medical professional indicating he required a four month recovery period, or that his surgery rendered him unable to pursue his legal rights for any significant period of time.

Consequently we are not prepared to find Malloy's allegations of his four month recovery period are sufficient to justify additional equitable tolling.

FOOTNOTES *(5.) & *(6)

*(5) To the extent that equitable tolling applies to this case, it would be because extraordinary circumstances prevented Malloy from filing the instant case. Specifically,Malloy alleges that the attorney who represented him in his 1997 action, Mr. Herrmann,was incompetent.The District Court found that ,indeed, the dismissal of that action for insufficient process and serviceof process was due to Mr. Herrmann's neglect. In addition, theCourt found that Malloy made every effort to contact his attorney,to ensure that the case was proceeding, and kept the Court apprised of his difficulty. Mr. Herrmann was subsequently debarred, and Appellant recovered all fees paid to Mr. Herrmannpursuant to the decision by the Monmouth County Board of Fee Arbitration.

*(6) The District Court correctly pointed out that even with more liberal application of equitable tolling principles, Malloy's would have been time barred. Malloy filed A motion for reconsideration on May 1,2000, approximately seven months after his prior case was dismissed. There is some case law suggesting that a statute of imitations does not run while a timely motion for reconsideration is pending. **See Holley v. DEPT OFVETERAN AFFAIRS . 165 F. 3d 244 (3rd Circ. 1999) (** stating that in EEOC agency roceeding,federal employee's timely filed request for reconsideration tolls 90 days deadline for filing in federal court, because agency decision is not "final" until request for econsideration is granted or (denied); **Metsopulos v. Runyon, 918 F.Supp. 851, 861 (D. N.J. 1996))**(stating that " the federal law is clear that a pending petition for agency reconsideration, timely filed, renders the underlying agency action nonfinal....T hus,the statute of limitations for judical review is tolled until the agency decides the petition for reconsideration.")(emphasis added)(

quoting **Virgin Islands Conservation Soc., Inc. v. Virgin Islands Bd. of Land use Appeals, 881 F.2d 28, 31 (3rd Cir.1989). We note in the instant case did not involve an agency proceeding**, and as the District Court pointed out, Malloy waited seven months to file a motion for reconsideration , thereby his motion is extremely untimely. Local civil rule 7.1(g) of the U.S. District Court for the District of New Jersey which contains the standard to be applied to motions for reconsideration, **see PITTSTON COMPANY V. SEDGWICK JAMES OF NEW YORK, INC., 971 F. Supp. 915, 918 (D. N.J. 1997)** states that such motions shall be served and filed within 10 days after the entry of the order or judgement on the original motion." L.Civ. R. 7.1 (g). However, even ifequitable tolling continued through December 29, 2000, the date on which the District Court filed its order denying the motion for reconsideration, Malloy still was deliquent in filing the instant action.

CONCLUSION

In conclusion even under the most liberal application of equitable Tolling, the statute of limitations expired on December 18,1999 and Malloy's Aptil 2, 2001 complaint was time barred. For the foregoing reasons, the judgement of the District Court will be affirmed.

TO THE CLERK:

Please file the foregoing Opinion.

Original signed by /s/ D. Brooks Smith
Circuit Judge

PETITIONER"S

SUPPLEMENT STATEMENT OF THE CASE BASED ON THE COURT OF APPEALS OPINION.

1.) The petitioner filed several responses on the opinion of the District Court Newark, because he had the wrong impression that an appeal considers the Appellant's side of the case. If you read the Opinions of the two lower Courts you will swear that you are reading the same document.

2.) For instance, the Appellant filed a defense which provided documentary evidence on the filing of the 2/23/01 complaint, which clearly proves that the Complaint was filed but the complaint(5 copies) were lost in the Clerk's office; NO COMMENT EITHER ACCEPT OR REJECT. Furthermore he provided documentary evidence on the March complaint submission.

3.)Since the Court of Appeals opinion is similiar to the District Court's opinion, the Supplemental Statement on that Courts'"opinion will also apply here.

4.) Not previously considered, the Court of Claims case(12/10/92) on the 9/27/91 False Claim was still being pursued by the DOJ until 12/18/95, and the Appellant avoided conflict with DOJ's actions and withheld his

complaint until the Court of Claims case was resolved. during this period, he supported the Government, and, in fact wrote the defense storyboard for CECOM in opposition to any Settlement.

5.) If anyone had read VOL I& II, it would be easy to see that they were one and the same, except for the documentary evidence in support of Vol I.

6.) Through the failure of the District Court to notify the Appellant of the 9/27/99 hearing as he had requested, (and received notification of the postponed July and August hearings), and with no other notification of the dismissal, how could either Court have assumed that the Appellant knew of the 9/27/99 dismissal. There is no evidence to support the Court's assumptions.

7.) Neither Court considered that the delays introduced by DOJ(4 months), and the delays introduced by Telephonics(43 months) consumed 4 years of the 6 year limit, and there is no doubt that the equitable tolling was unequitable.

8.) The somewhat snide implication in section II of the opinion, tries to imply that the Appellant was trying to harass the Appellee, and to correct that impression, the original complaint was filed in the Federal District Court of SC, since the plaintiff is a resident of SC. Since the fraud was committed in NJ, the complaint was transferred to Federal District Court for the District of NJ, and assigned to Newark Division. After that it was a case of reopening.

9.) Why would the DOJ intervene in a False Claim action which they had just settled.

10.) Both Courts acknowledge that dismissal of the action required the written consent of the Attorney General, but neither admits that they have that consent. If they do not, was the dismissal of the complaint void.? What is the penalty ?

OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS
Telephone

267-299-4928
FOR THE THIRD CIRCUIT
21400 United States Courthouse
501 Market Street
Philadelphia, PA 19106-1790

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Marcia M. Waldron
Clerk

June 30,2003

Mr. William T. Walsh, Clerk
United States District Court for the District of New Jersey
50 Walnut Street
Martin Luther King, Jr., Federal Office Building & Courthouse
Newark, NJ 07101

RE: DOCKET NO. 01-3916
Malloy vs. Telephonics Corp
D.C. No. 01-cv-00944

Dear Mr. Walsh:

Enclosed is a certified copy of the judgement together with copy of the opinion in the above- entitled case(s). The certified judgement is issued in lieu of the normal mandate and is to be treated in all repects as a mandate .

(X) We return herewith the certifird record in the case (s).

Kindly acknowledge receipt for the same on the enclosed copy of this letter.

Counsel are advised of the issuance of the mandate by copyof this letter. A copy of the certified judgement is also inclosed showing costs taxed, if any.

Very truly yours,
Marcia M. Waldron
Clerk

Original signed by : Carmella L. Wells
Case Manager

Enclosure
CC:

Mr. John F. Malloy
Todd M. Sahner, Esq.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case No:01-3916

UNITED STATES OF AMERICA
ex rel, JOHN F. MALLOY

V.

TELEPHONICS CORPORTATION

John F. Malloy,

Apellant

On Appeal from the United States District Court
For the District of New Jersey
(D.C. No. 01-cv-0944)
The Honorable John H. Bissell, District Judge

Submitted Under Third LAR 34.1 (a)

April 1,2003

Before: MCKEE, SMITH, COWEN, Circuit Judges

JUDGEMENT

This case came to be heard from the United States District Court for the District of New Jersey and was submitted on April 1,2003.

On consideration, it is hereby ORDERED AND ADJUDGED BY this Court that the judgement of the District entered August 28, 2001, for which reconsideration was denied on October 3, 2001 be and the same is hereby affirmed. Cost taxed against the Appellant. All of the above in accordance with the opinion of this court.

Attest:

Original signed by Marcia M.Waldron
Clerk

DATED: April 16,2003

Certified as a true copy and issued in lieu

of a formal mandate on 6/30/03

Teste: Original signed by Marcia M. Waldron

Clerk Court of Appeals for the Third Circuit.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case No.: 01-3916

UNITED STATES OF AMERICA,
ex rel JOHN F. MALLOY

v.

TELEPHONICS CORPORATION

John F. Malloy,

Appellant

On appeal from the United States District Court
For the District of New Jersey
(D.C. No. 01 -cv-00944)

The Honorable John H. Bissell, District Judge

Submitted Under Third Circuit LAR 34.1 (a)
April 1, 2003

Before MCKEE, SMITH, and COWEN,
Circuit Judges

(filed :April 16, 2003)

OPINION OF THE COURT

SMITH, Circuit Judge :

I

On April 2, 2001,Appellant John Malloy brought a qui tam suit under the False Claims Act, 31 U.S.C. S 3729 et seq.,alleging that his former employer, Appellee Telephonics Corporation (hereinafter "Telephonics "), submitted a false claim to the government in 1991, in violation of 31 U.S.C. S3729 (a)(1)* (1.),and that Malloy was subject to a retalitory dismissal in July of 1991 based on activity protected by the False Claims Act, in violation of 31 U.S.C. S3730 (h)*(2). On Appeal, Malloy argues that the District Court erred in dismissing his claim as time barred under the six year statute of limitations set forth in 31 U.S.C. S 3731(b)(1). We will affirm the judgement of the District Court.

FOOTNOTES *(1) &*(2)

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*(2) 31 U.S.C. S3730(h) provides:

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discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in this subsection. 31 U.S.C. S 3730 (h).

II

This is not the first suit Malloy has filed against Telephonics under the False Claims Act. On June 30, 1997, Malloy filed suit under the False Claims Act in the U.S.District Court For the District of South Carolina. The United States Declined to exercise its right to intervene in that suit. On Octcber 30, 1998, that action was transferred to New
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based on the statute of limitatioiis. The District Court determined that the statute of limitations had expired on "approximately December 18, 1999,". and dismissed the complaint with prejudice on August 27, 2001. The District Court denied Malloy'motion for reconsideration on October 3, 2001. Again proceeding pro se, Malloy filed the instant appeal.

FOOTNOTES *(3) & *(4)

(3.) Upon transfer to the Disrict of New Jersey, the action was given a Civil Number of 98-5218.

(4) Malloy alleges that he actually filed this action in February, 2001. However the Court Docket reflects that the complaint was not received for filing in the District Court until April 2 , 2001.

III

The District Court exercised Jurisdiction pursuant to 28 U.S.C. S 1331. We have jurisdiction pursuant to 28U.S.C. S 1291. We exercise plenary review of orders dismissing a claim based on the statute of limitations, and "this plenary review extends to the the District Court's choice and interpretation of equitable tolling principles and its conclusion that the facts prevented a tolling

of the statute of limitations." Lake v. Arnold, 232 F. 3d 360, 365 (3d Cir. 2000).

IV

We agree with the District Court that Malloy's claims under the False Claims Act are time barred. Section 3730 of the False Claims Act permits a private person, often called a "relator", to bring a civil action for a violation of section 3729 for the person and for the United States Government. Such an action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." 31 U.S.C. s 3730(b)(2). The statute of limitations provision of the False Claims Act provides that:

A civil action under 3730 may not be brought--

(1) more than 6 years after the date on which the violation of section 3729 is committed, or (2) more than 3 years sfter the date when facts material to the right of action are known or reasonably should have been Known by the offical of the United States charged with the responsibility to act in the circumstances,but in no event more than 10 years after the date of the violation is committed, which ever occurs last.
31 U.S.C. S3731(b).

Malloy concedes thar the claim accured when Telephonics filed the original false claim with the Army on September 21, 1991. Neither side contends that Malloy was unaware of the fraud at the time it occurred, and in fact, his complaint discusses his awareness of the facts

underlying the alleged fraud prior to and during its actual occurrence. The time which Malloy became aware of the Fraud- September 21, 1991 is important
because it determines whether we apply the six year statute oflimitations in S3731 (b)(1), or the three year limitation in S3731(b)(1). Because Malloy had knowledge of the alleged fraud more than three
years before this action was filed, his only basis asserting that his claims were timely is to proceed under the six year limitations periodof S3731(b)(1) for asserting that his claims were timely is to proceed under the six year limitations period of S 3731(b)(1).

"While the language of Fed. R. Civ. P. 8(c) indicates that a statute of limitations defense cannot be used in the context of Rule 12 (b)(6) motion to dismiss, an exception made were the complaint facially shows non-compliance with the limitation period and the affirmative defense clearly appears on the face of the
pleading."**OSHIVER V. LEVIN, FISHBEIN, SEDRAN & BERMAN**, 38, F.3d 1380, 1385 n.1 3rd Cir, 1994. In the instant case,the False Claim Act's six year period plainly bars Malloy's April 2, 2001complaint.

On appeal, Malloy contends that the complaint he filed on June 30,1997 in South Carolina was timely, and that his April 2, 2001 complaint should relate back to the first complaint for statute of limitations purposes.

Malloy asserts that the statute of limitations should during the pendency of

his 1997 civil action because of the incompetence of his lawyer, who caused that complaint to be dismissed without prejudice.

We cannot agree with Malloy's contention that his 2001 complaint should relate back to the filing of the 1997 complaint in South Carolina. Federal Rule pf civil procedure 15(c)

provides that:

A} in amendment of a pleading relates back to the date of the original pleading when: (1) relation back is permitted by the law that provides the the statute of limitations applicable to the action, or (2) the claim or defense asserted pleading arose out of the conduct, transaction, or occurence set forth or attempted to be set forth in the original pleading...

Fed. R. Civ. 15(c) (emphasis added). The District Court correctly determined that pursuant to the plain langage of the rule the relation back theory applies to an amendment of a pleading in the same civil action. We agree that " Rule 15(c) does not permit a complaint in one civil action to relate back to a complaint in separate civil action." Accordingly, we affirm the District Court's determination that

Malloy's 2001 New Jersey complaint does not relate back to the filing of the 1997 South Carolina complaint.

Statutes of limitations are subject to equitable where tolling is not consistent with the statute. **UNITED STATES V. BEGGERLY,** 524 U.S. 38, 48 (1998). ThisCourt has "executed caution in using the

equitable tolling doctrine, "**SEITZINGER V. READING HOSP. & MED. CTR.,** 165 F. 3d 336, 240 (3rd Cir. 1999), but is appropiate to
apply the doctrine " where it is consistent with congressional intent and called for by the facts of the case."
BOWEN V. CITY OF NEW YORK, 476 U.S. 467, 479 (1986); cf. **DAVIS V. JOHNSON,** 158 f.3D 806, 810 (5TH Cir"). 1998)
(The doctrine of equitable tolling preserves plaintiff'sclaims when strict pplication of the statute of limitations would be uequitable").Equitable tolling is appropriate in three types of situations:(1) where a defendant misleads a plaintiff with respect to his cause of action; (2) where the plaintiff has been prevented from asserting his claim as a result of other extraordinary circumstances; or(3) Where the plaintiff asserts his claims in a timely manner but has done so in the wrong forum. **Lake v. Arnold** 332 F.3d 360, 370 (3d Cir. 2000).(*5)

The Third Circuit has not sddressed the issue of whether equitable tolling doctrine applies in cases arising under the False laims Act. Yet we need not reach that issue even if equitable tollings principles applied to toll the statute of limitations while Malloy's 1997 action was pending before the District Court, the statute of limitations began to run again on September 27, 1999. the date on which Malloy's claim was dismissed. At that point, any arguable "extraordinarycircumstances" -- namely Malloy's counsel's incompetent

representation-- ceased. Malloy had eighty -two days remaining within the applicable limitations to pursue his claims. Since thestatute of limitations expired on approximately on December 18, 1999, Malloy's April 2 2001 complaint was time barred. *(6). Malloy's final contention on appeal is that the statute of limitations should be tolled for an additional four months due to his recovery period from brain surgery which he underwent October 1996. In support of his request for additional tolling, Malloy submitted a one page hospital form listing the expenses from his surgery, . He did not provide any certification, affidavit, or other verification from any medical professional indicating he required a four month recovery period, or that his surgery rendered him unable to pursue his legal rights for any significant period of time. Consequently we are not prepared to find Malloy's allegations of his four month recovery period are sufficient to justify additional equitable tolling.

FOOTNOTES *(5.) & *(6)

*(5) To the extent that equitable tolling applies to this case, it would be because extraordinary circumstances prevented Malloy from filing the instant case. Specifically,Malloy alleges that the attorney who represented him in his 1997 action, Mr. Herrmann,was incompetent.The District Court found that ,indeed, the dismissal of that action for insufficient process and

serviceof process was due to Mr. Herrmann's neglect. In addition, theCourt found that Malloy made every effort to contact his attorney,to ensure that the case was proceeding, and kept the Court apprised of his difficulty. Mr. Herrmann was subsequently debarred, and Appellant recovered all fees paid to Mr. Herrmannpursuant to the decision by the Monmouth County Board of Fee Arbitration.

*(6) The District Court correctly pointed out that even with more liberal application of equitable tolling principles, Malloy's would have been time barred. Malloy filed A motion for reconsideration on May 1,2000, approximately seven months after his prior case was dismissed. There is some case law suggesting that a statute of imitations does not run while a timely motion for reconsideration is pending. **See Holley v. DEPT OFVETERAN AFFAIRS . 165 F. 3d 244 (3rd Circ. 1999)** (stating that in EEOC agency roceeding,federal employee's timely filed request for reconsideration tolls 90 days deadline for filing in federal court, because agency decision is not "final" until request for econsideration is granted or (denied); **Metsopulos v. Runyon, 918 F.Supp. 851, 861 (D. N.J. 1996)**(stating that " the federal law is clear that a pending petition for agency reconsideration, timely filed, renders the underlying agency action nonfinal....T hus,the statute of limitations for judical review is tolled until the agency decides the petition for reconsideration.")(emphasis added)(quoting **Virgin Islands Conservation Soc., Inc. v. Virgin Islands Bd. of Land use Appeals, 881 F.2d 28,**

31 (3rd Cir.1989). We note in the instant case did not involve an agency proceeding, and as the District Court pointed out, Malloy waited seven months to file a motion for reconsideration , thereby his motion is extremely untimely. Local civil rule 7.1(g) of the U.S. District Court for the District of New Jersey which contains the standard to be applied to motions for reconsideration, **see PITTSTON COMPANY V. SEDGWICK JAMES OF NEW YORK, INC., 971 F. Supp. 915, 918 (D. N.J. 1997)** states that such motions shall be served and filed within 10 days after the entry of the order or judgement on the original motion." L.Civ. R. 7.1 (g). However, even ifequitable tolling continued through December 29, 2000, the date on which the District Court filed its order denying the motion for reconsideration, Malloy still was deliquent in filing the instant action.

CONCLUSION

In conclusion even under the most liberal application of equitable Tolling, the statute of limitations expired on December 18,1999 and Malloy's Aptil 2, 2001 complaint was time barred.

For the foregoing reasons, the judgement of the District Court will be affirmed.

TO THE CLERK:

Please file the foregoing Opinion.

Original signed by

/s/ D. Brooks Smith

Circuit Judge

SUPPLEMENT STATEMENT OF THE CASE BASED ON THE COURT OF APPEALS OPINION.

1.) The petitioner filed several responses on the opinion of the District Court Newark, because he had the wrong impression that an appeal presents the Appellant's side of the case. If you read the Opinions of the two lower Courts you will swear that you are reading the same document.

2.) For instance, the Appellant filed a defense which provided documentary evidence on the filing of the 2/23/01 complaint, which clearly proves that the Complaint was filed but the complaint(5 copies) were lost in the Clerk's office; NO COMMENT EITHER ACCEPT OR REJECT.

Furthermore he provided documentary evidence on the March complaint submission.

3.)Since the Court of Appeals opinion is only a parroting of the District Court's opinion, the Supplemental Statement on that Courts'"opinion will also apply here.

4.) Not previously considered, the Court of Claims case on the 9/27/91 was still being pursued by the DOJ until 12/18/95, and the Appellant avoided conflict with DOJ's actions and withheld his complaint until the Court of Claims case was resolved. during this period, he supported the Government, and, in fact wrote the defense storyboard for CECOM in opposition to any Settlement.

5.) If anyone had read VOL I& II, it would be easy to see that they were one and the same, except for the documentary evidence in support of Von I.

6.) Through the failure of the District Court to notify the Appellant of the 9/27/99 hearing as he had requested (and received notification of the postponed July and August hrarings), and with no other notification of the dismissal, how could either Court have assumed that the Appellant knew of the 9/27/99 dismissal. There is no evidence to support the Court's assumptions.

7.) Neither Court considered that the delays introduced by DOJ(4 months), and the delays introduced by Telephonics(43 months) consumed 4 years of the 6 year limit, and there is no doubt that the equitable toling was unequitable.

8.) The somewhat snide implication in section II of the opinion, tries to imply that the Appellant was trying to harass the Appellee, and to correct that impression, the original complaint was filed in the Federal District Court of SC, since the plaintiff is a resident of

SC. Since the fraud was committed in NJ, the complaint was transferred to Federal District Court for the District of NJ, and assigned to Newark Division. After that it was a case of reopening.

9.) Why would the DOJ intervene in a False Claim action which they had just settled.

10.) Both Courts acknowledge that dismissal of the action required the written consent of the Attorney General, but neither admits that they have that consent. If they do not, was the dismissal of the complaint void.? What is the penalty ?

APPENDIX C

RODALE LAWSUIT V. SETTLEMENT AGREEMENT AND FALSE CLAIM

Chronology

September 27, 1991	Telephonics submits a certified claim to CECOM on the "poor condition of the government supplied Level 3 drawings".
May 5, 1992	CECOM rejects claim.
December 10, 1992	Telephonics files an appeal with the U.S. Court of Appeals Case No. 92- 846C, stating that " CECOM supplied defective drawings".
August 23,1993	Rodale Electronics files a Civil Suit against Telephonics in the Supreme Court of the State of New York , County of Nassau, Index No. 93/ 024743. Paragraph 19 "Telephonics did not furnish a complete and accurate information and the design drawings were replete with errors, omissions and other deficiencies.." **Telephonics response (Verification by L. Neiman) Paragraph 18 " Defendant denies each and every allegation of paragraph 19 of the complaint except admits that certain design drawings relating to the manufacture of wiring harnesses which were received from the government and**

this page has been deleted insert instead doc. *Insert A* "subsequently furnished to Rodale ".....

case 1st motion

TELEPHONICS FRAUD AND THE RODALE CIVIL SUIT

SEPTEMBER 27, 1991	Telephonics submits a certified claim to CECOM on the "poor condition of the government supplied Level 3 drawings".
MAY 5, 1992	CECOM rejects claim.
December 10, 1992	Telephonics files an appeal with the U.S. Court of CLAIMS Case No. 92- 846C, stating that " CECOM supplied defective drawings".
August 23,1993	Rodale Electronics files a Civil Suit against Telephonics in the Supreme Court of the State of New York , County of Nassau, Index No. 93/ 024743. Paragraph 19(PG.A-17) "Telephonics did not furnish a complete and accurate information and the design drawings were replete with errors, omissions and other deficiencies o ....".
	Telephonics response (Verification by L. Neiman) Paragraph 18(PG.A-25) " Defendant DENIES each and every allegation of PARAGRAPH 17...

case 1st motion

paragraph 19 of the complaint except admits that certain design drawings relating to the manufacture of wiring harnesses which were received from the government and subsequently furnished to Rodale contained some errors".
NOTE: The Rodale Subcontract covered 10 different sub-assemblies.

The claim to CECOM , and the Appeal were based on defective design drawings not just two.

September 1995

Telephonics offered to settle the Appeal for $ 699,000 and the Government accepted.

December 19, 1995

Telephonics (L. Nieman) accepted the Settlement. Claus 11 " Telephonics Warrants and represents that no other suit or action with respect to the claims advanced in this action is pending or will be filed in or submitted to any court or administrative agency or legislative body" Clause 12 "Should there be any violation of these Warranties and

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s

Representations all monies paid pursuant to any judgment resulting from this stipulation will be promptly refunded to the to the government together with interest.

In conclusion, Telephonics Counterclaims in the Rodale lawsuit Paragraph 18, previously cited, impeached the basis for the Telephonics claim to CECOM of 9/27/91, i.e. defective design drawings .

Also, Telephonics response to the Rodale Cmplaint Paragraph 60th there is a counterclaim for $ 326,658 for the completion of the Harnesses SM-E-867315 and SM-E-867306 which were part of the actuals and the Cost to Complete of the 9/27/91 claim to CECOM. Paragraphs 48th and 49th enter a counterclaim of $ 192,021 for resident inspectors from 9/91 to 1/92 (this amounts to five fulltime inspectors). When Mr. Malloy visited Rodale in the first week of January 1991, the *TWO inspectors* were in place and had been for several months. Telephonics had faked the start date to hide the fact that these costs were in the 9/27/91 claim to CECOM.

IN CONCLUSION:

- **Telephonics failed to disclose the existence of the Rodale lawsuit and its contents to the Government.**
- **In paragraph 18 of Telephonics Response the basis of their claim of 9/27/91 to CECOM was impeached.**
- **Telephonics in their counterclaims to the Rodale Complaint Duplicated Costs that were in the ACTUAL COST OF 9/27/91 CLAIM, MAKING THIS THE <u>TWENTY FOURTH FRAUD WHICH WAS PRESENTED ON 9/27/91, AND APPROVED FOR PAYMENT ON 1/16/96.</u>**

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- to CECOM.
- THEREFORE, THE WARRANTY CLAUSE PREVIOUSLY CITED MUST BY INVOKED AND THE
- $ 699,000 PLUS INTEREST AND ALL MONIES PAID PLUS INTEREST REFUNDED PROMPTLY TO THE
- GOVERNMENT ER THE SETTLEMENT AGREEMENT
- MODIFICATION 50 TO DAAB -07-90-P001.
-
- Were the Governent negotiators aware of the impact of the settlement agreement on the Final Contract Price ? After the settlement, the contract price was as follows :

FINAL PRICE	$ 13,719,313.
ORIGINAL BID 67 ea.	$ 13,402,460
ADDITIONAL PROFIT	$ 316,953
PROFIT IN THE 67 BID	$ 1,490,000
TOTAL PROFIT	$ 1,806,853

THIS PROFIT WILL GO FAR IN COVERING THE CONTRACT OVERRUN,

further, FOR ALL THE ECPS AND NORS TO THESE DEFECTIVE DRAWINGS, IT APPEARS THAT TELEPHONICS FAILED TO COMPLY WITH CLAUSE C.4 , i.e. TO INCORPORATE ALL THE CHANGES THAT THEY SUBMITTRD INTO THE CECOM ORIGINALS .

THE ONLY QUESTION REMAINING , CONSIDERING THE EXTENT OF THE FRAUD ASSOCIATED WITH THIS SETTLEMENT, IS WHETHER

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THE PENALTY ASSESSED SHOILD BE UNDER THE WARRANTY CLAUSE, OR THE FASE CLAIMS ACT.